

**REGULAR STATE BANKING BOARD MEETING  
HELD BY CONFERENCE CALL  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**January 12, 2006**

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:03 a.m., Thursday, January 12, 2006, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)  
Bill Daniel, Member (*Office*)  
Roger Monson, Member (*Finley*)  
Anita Quale, Member (*Watford City*)

MEMBERS ABSENT: Ron Braseth, Member  
Lorren Henke, Member  
Launa Moldenhauer, Member

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)  
Doug Grenz, Chief Examiner – Banks (*Office*)

**ADDITION TO THE AGENDA**

Chairman Karsky noted there is one item to add to the agenda, which is a request from Western State Bank, Devils Lake.

**It was moved by Member Monson and seconded by Member Daniel to add the letter request to the agenda. The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

## **APPROVAL OF MINUTES**

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on November 10, 2005, the special meeting held on December 6, 2005.

Member Quale noted that on the bottom of Page 1, it is indicated the second to a motion was made by Member Braseth Quale, and this should be amended. Assistant Commissioner Entringer indicated this correction would be made with the correct Member that seconded the motion being listed.

**It was moved by Member Quale and seconded by Member Daniel to approve the November 10, 2005, minutes as amended. The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

**It was moved by Member Quale and seconded by Member Daniel to approve the minutes of the special meeting held December 6, 2005. The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

## **CHANGE OF CONTROL APPLICATION – JOHN, JULIE, LINDA AND PAUL OTTIS TO ACQUIRE 427.5 OF THE 1,000 OUTSTANDING SHARES OF KINDRED STATE BANK, KINDRED**

Assistant Commissioner Entringer noted he did not send out a Memorandum on this item since this a straight forward application.

Assistant Commissioner Entringer noted that John, Julie, Linda, and Paul Ottis are the children of Alpha Ottis, who as noted in the letter has passed away. The four children of Alpha Ottis are inheriting her shares of stock, and rather than get into a debate as to whether or not they needed to file a change of control, the Department told them they could act in concert and effectively control the bank. Therefore, if they simply submitted a change of control, it could be acted on and the matter would be resolved. The information contained in the letter is all that is needed since there is no purchase, it is simply an inheritance.

Assistant Commissioner Entringer indicated the legal notice was published in *The Forum*, Fargo, on January 3, 2006, and no comments were received.

Assistant Commissioner Entringer noted there are no changes in the bank officers and three of the children are actually on the Board of Directors.

**It was moved by Member Monson and seconded by Member Quale to approve the change in stock ownership as presented for the Kindred State Bank, Kindred. The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

## **REQUEST TO EXTEND DEADLINE**

Assistant Commissioner Entringer noted the Board is simply being asked to extend the amount of time that First International Bank & Trust, Watford City, needs to get the facility constructed and opened at 4501 40<sup>th</sup> Avenue South, Fargo.

**It was moved by Member Quale and seconded by Member Daniel to amend the Order and give First International Bank & Trust, Watford City, an additional 90 days in which to open the facility located at 4501 40<sup>th</sup> Avenue South, Fargo, and to authorize Chairman Karsky to sign the Amended Order on behalf of the State Banking Board.**

Chairman Karsky asked Member Quale if that would be sufficient time, and Member Quale indicated the building would be fully enclosed within a week; therefore, that should be on track at that point.

**The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

## **PROPOSED RULES FOR DEPOSIT PRODUCTION OFFICES**

Chairman Karsky proposed to table the discussion and consideration based on the fact that three of the Board members are absent.

**REQUEST BY WESTERN STATE BANK, DEVILS LAKE, TO INVOKE THE WILD CARD STATUTE AND INTERPRET THE STATE'S LEGAL LENDING LIMIT THE SAME AS NATIONAL BANKS WITH RESPECT TO WHOLLY-OWNED SUBSIDIARIES AND LOANS TO THOSE WHOLLY-OWNED SUBSIDIARIES FROM THE PARENT BANK**

Assistant Commissioner Entringer read the January 11, 2006, letter from Brian L. Houkum, CEO of Western State Bank, Devils Lake, to the State Banking Board. In his letter, CEO Houkum discusses the wholly-owned subsidiary, Western Finance and Lease, and discusses the funding for leases and loans by this subsidiary. Currently, Western Finance and Lease borrows from Western State Bank, and the amount owed by the leasing company to the bank exceeds the bank's legal lending limit; however, all of the actual leases within the lease company's portfolio are well within the bank's legal lending limit. CEO Houkum stated when they extend credit to any customer of the bank or the lease company, they combine those exposures to ensure that on an aggregate basis they do not exceed the bank's legal lending limit. CEO Houkum cites 12 CFR Section 32.1(c)(1) which states a national bank's legal lending limit does not apply to loans to a wholly-owned subsidiary of the bank. In his letter, CEO Houkum requests that the state banks be treated the same as national banks relative to this portion of the legal lending limit.

Assistant Commissioner Entringer gave the Board some background as to how this situation came about, noting that he and Commissioner Karsky had been talking with another banker who had inquired as to how the bank's legal lending limit would apply to a wholly-owned subsidiary. Assistant Commissioner Entringer indicated the bank's legal lending limit would apply because the wholly-owned subsidiary is certainly an entity and therefore would apply. In this conversation the banker indicated he knew of a situation where there was a wholly-owned subsidiary of a bank that was not complying with this legal lending limit. During that conversation, Commissioner Karsky and Assistant Commissioner Entringer were able to ascertain who the subsidiary was that this banker was referring to, and as a result they contacted the Supervising Examiner for that particular bank. The Examiner indicated to Commissioner Karsky and Assistant Commissioner Entringer that the bank had on its books a \$100 million line of credit. Commissioner Karsky inquired as to how that could occur when the bank's legal lending limit was substantially less, and the Examiner pointed out that when the balance sheets are consolidated the loan to the subsidiary and the loan from the liability of the subsidiary are eliminated under the rules of consolidation, which is correct. After discussing this the Examiner began doing some research and found

that under national banking law, loans from a national bank to a wholly-owned subsidiary are not subject to the bank's legal lending limit. Therefore, after finding this out, the Department contacted the bank and asked them to submit a request to the State Banking Board to have the Board rule on this under the wild card powers.

Assistant Commissioner Entringer pointed out that Section 32.1(c)(1) also says that loans from a subsidiary to a borrower must comply with the bank's legal lending limit. Therefore, if you have a situation such as Western Finance and Lease, which is engaging in leasing, those leases must comply with the bank's legal lending limit, and that is what CEO Houkum told us they are doing at the present time.

Assistant Commissioner Entringer indicated we would want to incorporate that interpretation into this request also, if the Board so desires.

Chairman Karsky added if the Board approves this request, it is not approval for just Western State Bank, it is an approval for all state banks in North Dakota.

Assistant Commissioner Entringer summarized what the Board is being asked to consider: (1) that loans from a bank to a wholly-owned subsidiary do not need to comply with the bank's legal lending limit; (2) loans from a wholly-owned subsidiary to a borrower must comply with the bank's legal lending limit.

Chairman Karsky indicated the Department does not have a problem with this interpretation, but does have a request from another bank, and when we respond to them we want to make sure that the subsidiary has to comply with the bank's legal lending limit.

Member Quale inquired as to whether they have a reserve for loan losses in the subsidiary, and Assistant Commissioner Entringer indicated they do.

Assistant Commissioner Entringer pointed out that when we examine a bank that has a wholly-owned subsidiary we have the authority to and do in fact examine the wholly-owned subsidiary also.

**It was moved by Member Quale and seconded by Member Monson under the wild card statute to authorize state-chartered banks to exclude loans to a wholly-owned subsidiary from the bank's legal lending limit; however, loans from a wholly-owned subsidiary to a borrower must comply**

**with the bank's legal lending limit. The motion carried by a vote of 4 to 0, with Members Braseth, Henke, and Moldenhauer absent.**

The Board went into closed session at 9:23 a.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary